

REMARKS/ARGUMENTS

**Claims Status**

Claims 1-19 are pending. Claims 1, 8 and 9 are currently amended. Claims 10-19 are added. Claim 1 is amended to specify that the surface-hydrophobated water-absorbing polymer particles comprise a crosslinked polymer (support in [0014] of the specification as published). Claims 8 and 9 are amended to depend from claim 1. New claims 10-18 parallel original claims 1-9 and differ in that the surface-hydrophobated water-absorbing polymer particles comprise a polymer or copolymer of hydrophilic vinyl monomers (support in [0020] of the specification as published). New claim 19 is drawn toward the surface-hydrophobated water-absorbing polymer particles of claim 1 that comprise a crosslinked polymer, wherein said crosslinked polymer is a crosslinked polymer or copolymer of hydrophilic vinyl monomers (support in [0014] and [0020] of the specification as published). No new matter has been entered.

**§102(b) Rejection**

Claim 1 is rejected under 35 U.S.C. §102(b) as anticipated by *Daisuka* (EP 1036553). Applicants respectfully traverse this rejection.

A. *Daisuka* does not disclose the claimed water-absorbing polymer particles.

The claimed invention relates to an emulsified cosmetic composition comprising surface-hydrophobated water-absorbing polymer particles and water, wherein said surface-hydrophobated water-absorbing polymer particles comprise a crosslinked polymer (see claims 1-9) or a copolymer of hydrophilic vinyl monomers (see claims 10-18).

*Daisuka* discloses an emulsion cosmetic composition produced by “formulating a hydrophobically treated powder, spherical silica, an oil, and water in the specific ratio” (Abstract, [0003], [0004]). Additionally, while *Daisuka* discloses hydrophobically treated

powders such as titanium oxide coated mica and titanium oxide coated talc (see [0018]),

*Daisuka* does not disclose water-absorbing polymer particles as claimed by Applicants.

Furthermore, *Daisuka* is silent with respect to (i) the surface-hydrophobated water-absorbing polymer particles comprising a crosslinked polymer (i.e., claims 1-9), and (ii) the surface-hydrophobated water-absorbing polymer particles comprising a copolymer of hydrophilic vinyl monomers (i.e., claims 10-18).

Accordingly, since *Daisuka* does not disclose all of the claimed elements (i.e., (i) the surface-hydrophobated water-absorbing polymer particles comprising a crosslinked polymer, (ii) the surface-hydrophobated water-absorbing polymer particles comprising a copolymer of hydrophilic vinyl monomers, and/or (iii) the surface-hydrophobated polymer particles being water-absorbing), *Daisuka* does not anticipate Applicants' claims.

Thus, Applicants request withdrawal of this rejection.

B. *Daisuka* does not render obvious Applicants' claims.

For all of the reasons discussed above, as well as those to follow, *Daisuka* does not render obvious any of Applicants' claims.

First, the Office itself has stated that "*Daisuka* does not teach of a silicone-modified water-absorbing polymer particle;" therefore, *Daisuka alone* does not render obvious Applicants' claims comprising such silicone-modified water-absorbing polymer particles.

Second, the Office's reliance on *Nambu* to fulfill the stated deficiency of *Daisuka* is further evidence that *Daisuka alone* does not render obvious Applicants' claims. If this were not the case (i.e., the Office believed *Daisuka* alone could support an obviousness rejection on its own), then the lack of presenting such a rejection in the current Office Action would be in contradiction to M.P.E.P. 707.07(g).

Accordingly, Applicants submit that *Daisuka* alone does not render obvious any of the pending claims.

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### **§103(a) Rejection**

Claims 2-9 are rejected under 35 U.S.C. §103(a) as obvious in view of the combination of *Daisuka* (EP 1036553) and *Nambu* (EP 1258290).

*Nambu* was published on November 20, 2002. The current application claims priority to JP 2002-330609 (November 14, 2002). Applicants submit herewith a certified English translation of JP 2002-330609 to perfect priority. Accordingly, Applicants request that the Examiner acknowledge Applicants' request for the benefit of an earlier filing date provided by the claim to priority to JP 2002-330609, which is earlier than the publication and filing dates of *Nambu*.

Accordingly, as the rejection of claims 2-9 relies on *Nambu*, which is not available as a reference, and the Office recognizes that “*Daisuka* does not teach of a silicone-modified water-absorbing polymer particle” as claimed, Applicants request the withdrawal of this rejection.

### **Conclusion**

For the reasons discussed above, Applicants submit that all now-pending claims are in condition for allowance. Applicants respectfully request the withdrawal of the rejections and passage of this case to issue.

Respectfully submitted,

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